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In the

Supreme Court of the United States

JOSEPH SCHEIDLER, ANDREW SCHOLBERG, TIMOTHY MURRAY, AND THE PRO-LIFE ACTION NETWORK, INC.,

Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., et al.,

Respondents.

OPERATION RESCUE,

Petitioner,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICI CURIAE* NARAL PRO-CHOICE AMERICA, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, AMERICANS FOR DEMOCRATIC ACTION, INC., BLACK WOMEN'S HEALTH IMPERATIVE, CENTER FOR REPRODUCTIVE RIGHTS, CENTER FOR WOMEN POLICY STUDIES, HADASSAH, WZOA, INC., LEGAL MOMENTUM, NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM, NATIONAL CENTER FOR LESBIAN RIGHTS, NATIONAL COUNCIL OF JEWISH WOMEN, INC., NATIONAL HEALTH LAW PROGRAM, NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH, NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, NATIONAL WOMEN'S LAW CENTER, WOMEN EMPLOYED, WOMEN'S LAW PROJECT AND WOODHULL FREEDOM FOUNDATION IN SUPPORT OF RESPONDENTS

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INTERESTS OF *AMICI CURIAE*

NARAL Pro-Choice America (and its co-*amici)* are organizations committed to promoting civil rights. All share a strong interest in protecting the guarantees of the First Amendment of the United States Constitution and the right to peaceful, nonviolent protest. Indeed, most civil rights were secured through exercise of these First Amendment rights to advance and protect the freedoms to which their organizations are committed. At the same time, all the *amici* want to ensure that forcible, threatening and violent conduct is not confused with constitutionally-protected peaceful protest, lest the misdeeds of petitioners and others like them taint and ultimately put an end to *amici*'s and others' efforts to effect social change through legitimate, constitutionally-protected means.[1] (Descriptions of each of the *amici* are provided in the Appendix hereto.)

STATEMENT

Amici note the following facts particularly relevant to the legal discussion in this brief.

This case was brought on behalf of full-service health clinics and their patients whose interstate business operations repeatedly have been disrupted by petitioners' nationwide campaign of violence and terror. The evidence presented to the courts below demonstrated beyond doubt that petitioners unlawfully conspired to force the closing of clinics that perform abortions and that they did so through a pattern of illegal

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[1] All parties in this matter have consented to the filing of this *amici curiae* brief, as evidenced by the letters of consent filed with the Clerk. *Amici* are not related in any way to any party in this case, and no party or its counsel has authored any part of this brief. No person or entity other than *amici* and their counsel has made any monetary contribution to the preparation of this brief.

racketeering activity that included acts and threats of violence in violation of the Hobbs Act. Respondents have suffered substantial injury as a result of petitioners' unlawful conduct, which unquestionably has affected respondents' ability to provide medical care to their patients throughout the country, and which, as both lower courts have found, is fully redressable only through injunctive relief. In addition, by finding petitioners liable for four "acts or threats of physical violence" under the Hobbs Act, the jury necessarily found, as both the district court and the Seventh Circuit expressly have held, that petitioners' conduct is not protected speech under the First Amendment. These First Amendment rulings are not before this Court.[2]

The evidence presented at trial demonstrated that petitioners operated and managed their RICO enterprise, the Pro-Life Action Network ("PLAN"), through force, threats and violence, to prevent respondents from exercising their rights to access constitutionally-protected medical procedures. Naming themselves the "pro-life Mafia," petitioners participated in a long-standing pattern of engaging in, authorizing, and/or ratifying wrongful acts and threats of physical violence as a means to put an end to safe, legal abortion throughout the country. Their wrongful conduct included:

- In Los Angeles, California, PLAN protesters physically assaulted a patient who was seeking medical care at a health clinic as a follow-up to her

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[2] Prior to trial, in *National Organization for Women, Inc.* v. *Scheidler*, 510 U.S. 249 (1994) ("*Scheidler I*"), this Court reversed the initial dismissal of the complaint in this case, finding that the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c), does not have an "economic motive" requirement. Also prior to trial, but after the decision in *Scheidler I*, this Court denied petitioners' request for certiorari on, *inter alia*, First Amendment issues. *Scheidler* v. *Delaware Women's Health Org., Inc.*, 513 U.S. 1058 (1994) (mem.).

ovarian surgery. She testified: "All of a sudden, a crowd of people came running from both sides of the building towards the parking lot, towards us . . . somebody grabbed me by the back of my hair, and I fell up against the car. Then I just saw all of these people and they were grabbing their arms and grabbing at me. . . . Then I felt myself going down, and I got scared, real scared." One protester hit her over the head with a "big" picket sign. The attack forced open this patient's surgical incision, causing her to bleed from the abdomen, and she had to be rushed to the hospital. (Appendix to Petition for a Writ of Certiorari of Petitioners Joseph Scheidler, Andrew Scholberg, Timothy Murphy and the Pro-Life Action League, Inc. ("Sch. App.") 143a-144a.)

- In Chico, California, hundreds of PLAN members physically smashed a clinic administrator and two clinic escorts up against a clinic's entrance doors. When the clinic administrator told the protestors that she was scared and was being crushed, she heard protestors shout: "Don't pay any attention to them. They're murderers. They're baby killers. Whatever happens to them is God's will." The glass entrance to the clinic was damaged, and the clinic administrator received bruises on her legs and arms. (*Id.* at 143a.)

- In Pensacola, Delaware, while petitioner Joseph Scheidler stood outside with a bullhorn, a number of PLAN members burst into a reproductive health clinic and engaged in several acts of violence. They pushed the clinic administrator down the stairs, causing her severe disk damage; as a result, the administrator had to wear a neck brace and go to physical therapy for several months. In addition, one of the invaders slammed a National Organization for Women ("NOW") escort up against

the wall, causing serious injuries. The PLAN members also destroyed the clinic's medical equipment. (Trial Transcript ("Tr.") 1469-72, 4022.)

- In Washington, D.C., busloads of PLAN members rushed the doors of a clinic, pressing the bodies of clinic staff members and volunteers against the clinic entrance as they screamed they were being crushed. As one witness testified, "[S]everal of us started yelling as loud as we could, 'please stop pushing. We're going to get hurt.'" (Sch. App. 143a.)

- In Milwaukee, Wisconsin, PLAN members repeatedly banged on a patient's car as she entered a health clinic parking lot and grabbed at her arms and legs as she attempted to enter the clinic. (*Id.*)

Numerous witnesses testified to the impact that this violence had upon them. A clinic volunteer recounted, "They were . . . shoving and elbowing and smashing. I mean, they were right within less than an inch of us. . . . [Y]ou know, you start sweating. You're scared. Your heart's pounding." A patient testified, "I was hysterical. I was afraid. I thought they were going to kill me." (Sch. App. 144a-145a.) A clinic administrator explained, "I was concerned about the injury to our staff and to our patients, not only the physical injury of the building itself and the equipment but also the emotional injury and distress to our patients and to our staff, who were terrified." (*Id.* at 143a-144a.)

At the close of trial, after the presentation of this evidence and much more, the district court instructed the jury on the relevant legal issues. Regarding the First Amendment, the district court made clear to the jury that "the right to engage in peaceful protest" is not "an issue in this lawsuit," and that "[t]he parties agree that peaceful picketing, leafletting, and

participating in the legislative process are activities protected by the First Amendment." (Sch. App. 178a.) Then, in complete accordance with this Court's precedents, the district court specifically instructed the jury that while "[m]ere advocacy of the use of force and violence may not be the basis for finding defendants liable for having made the speech or authored the writing,"

> [t]hreats to patients, owners or operators of clinics, clinic staff including doctors, and those assisting patients, owners, operators, or clinics or staff are not protected by the First Amendment. Physical attacks on patients, owners, operators of clinics, or clinic staff are not protected by the First Amendment. Destruction of property is not protected by the First Amendment.

(*Id.* at 187a-188a.) In addition, guided by this Court's decision in *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982), the district court emphasized that petitioners would not be liable through "guilt by association," instructing the jury that "[l]iability may not be imposed upon any defendant merely because that defendant belonged to a group, some members of which committed acts of violence" and that "[i]n order to find the defendants liable, you must conclude that the enterprise or those acting on behalf of the enterprise directly or indirectly authorized or ratified unlawful activities and that the defendants held a specific intent to further those illegal objectives." (*Id.* at 185a.)

The jury returned a unanimous verdict, finding petitioners responsible for operating PLAN through a pattern of 121 RICO predicate acts, including 4 acts or threats of physical violence. (Sch. App. 190a-195a.) The district court then independently found that petitioners' crimes had continued unabated and that injunctive relief was both necessary and fully consistent with the First Amendment. As the district court noted, "[t]he injunction restrains specific behavior of

[petitioners] that the courts have held are not protected: obstructing or interfering with the access to a reproductive health facility, trespassing, damaging property, and using violence or threats of violence. . . . The injunction still leaves open many avenues for [petitioners] to express their anti-abortion beliefs . . . such as peaceful picketing, public speeches, pamphleting, praying, or sidewalk counseling." (*Id.* at 169a (citations omitted).)

In affirming the jury verdict and injunction, the Seventh Circuit similarly held that there were no First Amendment problems in this case, noting that "the record is replete with evidence of instances in which [petitioners'] conduct crossed the line from protected speech into illegal acts, including acts of violence, and it is equally clear that the First Amendment does not protect such acts." (Sch. App. 44a.) The court of appeals emphasized that "the district court adequately ensured that the jury's verdict was not based on activities protected by the First Amendment, and that the remedies it ordered also respected the line between protected expression and unprotected conduct." (*Id.*) Furthermore, the Seventh Circuit held that the district court's *Claiborne Hardware* instruction—the only First Amendment jury instruction challenged by petitioners on appeal—fully complied with the law. (*Id.* at 49a-51a.)

In *Scheidler* v. *National Organization for Women, Inc.*, 537 U.S. 393 (2003) ("*Scheidler II*"), this Court reversed on the ground that petitioners had not committed extortion under the Hobbs Act. The *Scheidler II* Court limited its decision to the single question of extortion. As here (and as in *Scheidler I*), no First Amendment issues or jury instruction challenges were before the Court.[3] After receiving the *Scheidler II* mandate, the

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[3] Petitioners sought review on First Amendment issues in *Scheidler II*, *see* Petition for a Writ of Certiorari of Joseph Scheidler, et al., *Scheidler II*, 537 U.S. 393 (No. 01-1118), 2002 WL 32101166, at *i; Petition for Writ of Certiorari of Operation Rescue, *Scheidler II*, 537 U.S. 393 (No. 01-

Seventh Circuit remanded to the district court to determine one remaining question: whether the petitioners' four predicate acts involving acts or threats of physical violence are sufficient to support an injunction. It is this limited ruling by the Seventh Circuit that is now on review.

In particular, this Court has granted certiorari review on three questions: (i) whether the court of appeals violated this Court's mandate in *Scheidler II*; (ii) whether the Hobbs Act prohibits acts and threats of physical violence that are not connected to robbery or extortion; and (iii) whether injunctive relief is available in a private civil action under RICO. Although no First Amendment question is at issue before this Court, petitioners and their *amici* nevertheless suggest that an injunction prohibiting them from repeating concededly illegal acts—threats of violence and violence—somehow would transgress the First Amendment. Given this suggestion, *amici* explain below that First Amendment freedoms are in no way hampered by this case. For the reasons discussed below, and those in respondents' brief, the Court should affirm.

SUMMARY OF ARGUMENT

This case is about the scope of the Hobbs Act and the remedies available under RICO. It is about petitioners' criminal acts and threats of violence. This case is neither about abortion nor is it about peaceful social protest protected by the First Amendment.

1119), 2002 WL 32101172, at *i, but the Court limited its grant of certiorari to (i) the meaning of "extortion" under the Hobbs Act and (ii) whether private injunction relief is available under RICO, *see Scheidler* v. *National Org. for Women, Inc.*, 535 U.S. 1016 (2002) (mem.); *Scheidler II*, 537 U.S. at 397. The Court did not reach the RICO injunction question. *See id.*

As this Court has long recognized, "[t]he First Amendment does not protect violence." *Wisconsin v. Mitchell*, 508 U.S. 476, 484 (1993) (quoting *Claiborne Hardware*, 458 U.S. at 916) (internal quotation marks omitted) (noting that physical assaults are not protected by the First Amendment). This Court also has made clear that "[t]hreats of violence are outside the First Amendment." *Virginia* v. *Black*, 538 U.S. 343, 359 (2003) (quoting *R.A.V. v. City of St. Paul*, 505 U.S. 377, 388 (1992)) (internal quotation marks omitted). Indeed, as the Seventh Circuit noted below, "[v]iolence in any form is the antithesis of reasoned discussion." (Sch. App. 55a.) Petitioners, found by the jury to have engaged in unlawful violent conduct—conduct that, in *Scheidler II*, both this Court and petitioners acknowledged was "criminal," *Scheidler II*, 537 U.S. at 404 & n.9—cannot cloak themselves in the mantle of nonviolent protest and expression protected by the First Amendment. Thus, holding petitioners accountable for their violent actions will not jeopardize this nation's long tradition of peaceful political protest. It will simply (and properly) direct those with passionate views "away from the use of threats and violence and back to 'all the peaceful means for gaining access to the mind.'" (Sch. App. 55a.)

The Seventh Circuit properly has made clear that the only injunction still available in this case is one tailored to redress the specific types of clearly illegal conduct that the jury found petitioners had engaged in the past. The injunction sought by respondents is necessary to save lives. Even as limited by the Seventh Circuit, an injunction remains essential to ensure the safety of medical professionals from petitioners' continuing nationwide pattern of unlawful, unprotected acts and threats of violence.

Accordingly, this Court should affirm the Seventh Circuit's decision and permit the district court to consider in the first instance "[t]he only remaining question" in this litigation: whether petitioners' acts and threats of physical violence are sufficient to support an injunction.

ARGUMENT

I. THE SEVENTH CIRCUIT'S DECISION POSES NO THREAT TO FIRST AMENDMENT FREEDOMS

Although the issue is not even before the Court, petitioners and their *amici* contend that the court of appeals' decision "threatens free speech" and "place[s] at risk a wide array of political and labor protestors." (Brief for Petitioners Joseph Scheidler, Andrew Scholberg, Timothy Murphy and the Pro-Life Action League, Inc. ("Sch. Br.") at 31; Brief of the Concerned Women for America As *Amicus Curiae* Supporting Petitioners at 2; *see* Brief *Amicus Curiae* of Consistent Life, et al. in Support of Petitioners ("CL Br.") at 1-30; Brief of *Amicus Curiae* Americans United for Life in Support of Petitioners at 1.) This alarmist argument has no merit. First Amendment interests are simply not at stake here.

A. First Amendment Questions Are Not Before This Court

As an initial matter, it should be noted that there are no First Amendment questions before this Court. The three questions presented in the petition—(i) whether the Seventh Circuit, on remand, overstepped the bounds of this Court's mandate in *Scheidler II*, (ii) whether the Hobbs Act may be read to proscribe acts or threats of violence that are unconnected to robbery or extortion, and (iii) whether private litigants may obtain equitable relief in a civil RICO action—concern only the scope of this Court's mandate and the proper interpretation of two federal statutes. Thus, just as in *Scheidler I* and *Scheidler II*, the Court should once again "decline to address" any of the First Amendment arguments raised by petitioners and their *amici* (arguments that plainly fail on the merits, as we discuss below) on the indisputable ground that they are outside the limited questions this Court has accepted for review. *See Scheidler I*, 510 U.S. at 262 n.6 ("declin[ing] to address the First

Amendment question argued" when "the question presented for review asked simply whether the Court should create an unwritten requirement limiting RICO to cases where either the enterprise or racketeering activity has an overriding economic motive"); *see also Scheidler II*, 537 U.S. at 397-411 (addressing only the meaning of "extortion" under the Hobbs Act and not addressing any First Amendment issues).

B. Violence and Threats of Violence Are Not Protected Forms of Expression

It is well-settled that acts and threats of violence are not protected by the First Amendment. *See, e.g.*, *Wisconsin* v. *Mitchell*, 508 U.S. 476, 484 (1993) (noting that violent conduct and physical assaults are unprotected by the First Amendment); *Virginia* v. *Black*, 538 U.S. 343, 359 (2003) (noting that threats of violence are unprotected by the First Amendment); *Watts* v. *United States*, 394 U.S. 705, 708 (1969) (same). And, despite what petitioners and their *amici* claim, unlawful acts and threats of violence—*not* protected speech or expressive conduct—are all that is at issue in this case.

In particular, as discussed above, the jury found petitioners liable for engaging in forcible, threatening, violent actions, *not* for peaceful demonstrations or nonviolent protests. *See supra* pp. 1-6. Likewise, the nationwide injunction entered by the district court prohibits only plainly illegal conduct, and it specifically underscores that it "does not prohibit peaceful picketing, speeches, or praying on public property, attempts to speak with patients and staff, handing out literature, or any other activity protected by the First Amendment." (Sch. App. 54a.) Furthermore, the Seventh Circuit's recent decision on remand makes clear that the only potential form of relief still available in this case is an injunction tailored "to redress the four acts of physical violence that the jury found had taken place and that

were not encompassed within th[is] Court's ruling" in *Scheidler II*. (*Id.* at 16a.)[4]

Petitioners and their *amici* point to this Court's decision in *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982), in an effort to create a free-speech issue here that simply does not exist. (*See* Sch. Br. at 31-32; CL Br. at 9-16.) *Claiborne Hardware* involved isolated acts of violence as to which there was no evidence of NAACP authorization or ratification. *See Claiborne Hardware*, 458 U.S. at 923-24. With respect to defendant Charles Evers, the Court made clear that Evers could have been found liable had the facts shown that he had "authorized, directed, or ratified specific tortious activity." *Id.* at 927. Evers was absolved of responsibility because of a lack of evidence, not because the First Amendment immunized force or violence. In addition, the Court cited with approval its prior decision in *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287 (1941), which held that an injunction was proper in the context of pervasive violent conduct much like the conduct at issue here. *See Claiborne Hardware*, 458 U.S. at 923.[5] Thus, just like the rest of this Court's precedents,

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[4] Under this Court's precedents, such an injunction clearly is not an unlawful prior restraint, as it would follow from the jury's findings of past illegal conduct. *See Madsen* v. *Women's Health Ctr., Inc.*, 512 U.S. 753, 764 n.2 (1994) (no prior restraint where injunction issued because of prior unlawful conduct); *Schenck* v. *Pro-Choice Network of Western N.Y.*, 519 U.S. 357, 374 n.6 (1997) (rejecting argument that all injunctions are improper prior restraints where injunction prohibited conduct previously adjudicated and found unlawful).

[5] The Consistent Life *Amici* argue that *Milk Wagon Drivers* does not "continue[] to express a constitutionally viable principle after *Claiborne Hardware*" and attempt to rely on an *amicus* brief NOW filed in *Claiborne Hardware* to support this argument. (CL Br. at 13; *see id.* at 11-14.) This makes no sense. Regardless of whatever arguments NOW may have raised before this Court decided *Claiborne Hardware* (which we properly do not address here), the Court made clear in *Claiborne Hardware* that *Milk Wagon Drivers* is still good law. *See Claiborne*

Claiborne Hardware offers no First Amendment protection to acts and threats of violence, *see Claiborne Hardware*, 458 U.S. at 916 ("The First Amendment does not protect violence."); *id.* at 933 ("[V]iolent conduct is beyond the pale of constitutional protection."), and thus provides no support for petitioners' arguments.

Indeed, as noted above, the district court was guided by *Claiborne Hardware* throughout this litigation and gave instructions to the jury, which were upheld on appeal and not accepted for review by this Court, specifically to address the First Amendment. *See supra* pp. 4-6. The Seventh Circuit also considered and properly rejected the very same First Amendment arguments petitioners and their *amici* now attempt to raise in this Court. (Sch. App. at 47a-51a.) And, in *Scheidler II*, this Court declined to grant certiorari on the First Amendment question presented by petitioners. *See supra* p. 6 & n.3. Nor are First Amendment issues before the Court now. *See supra* pp. 6-7, 9-10.

Simply put, no one is trying to silence petitioners from expressing their views about abortion through lawful, peaceful means; indeed, this Court has already noted and petitioners have admitted that the conduct at issue in this case is "criminal." *Scheidler II*, 537 U.S. at 404 & n.9. Respondents simply seek a court order requiring petitioners to put down their weapons and stop using force, violence and threats against respondents and others. That result, as the courts below held and this Court's case law makes clear, is fully consistent with the First Amendment. *See supra* pp. 1-7, 10 and cases cited; *Madsen*, 512 U.S. at 764 n.2 (finding no prior restraint on protected speech where the injunction was issued because of petitioners'

Hardware, 458 U.S. at 923; *see also Schenck*, 519 U.S. at 373, 375 (citing *Milk Wagon Drivers* favorably); *Madsen*, 512 U.S. at 765, 774 (same).

prior unlawful conduct); *see also Scheidler I*, 510 U.S. at 264 (Souter, J., concurring) (noting that there are no First Amendment interests in "keep[ing] RICO from reaching ideological entities whose members commit acts of violence we need not fear chilling").

C. The Seventh Circuit's Decision Is Not "Irreconcilable with the Long History of Social Protest in This Country"

Invoking the names of Martin Luther, King, Jr., Rosa Parks and other champions of civil rights and civil liberties, the Consistent Life *Amici* also contend that the Seventh Circuit's decision on remand somehow conflicts with this nation's "long history of social protest" and "places all social protestors in grave financial jeopardy." (CL Br. at 3, 24; *see id.* at 24-26.) This doomsday analysis is wholly unjustified. Dr. King, Ms. Parks and the other *peaceful* protestors mentioned simply did not engage in the sort of violent threats and physical assaults engaged in by petitioners, proscribed by the Hobbs Act, and at issue in this case. Indeed, petitioners' conduct directly and unequivocally violates the very principles of nonviolence for which Dr. King stood.[6]

As noted above, petitioners here engaged in repeated acts and threats of physical violence. *See supra* pp. 1-4. It is

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[6] Dr. King cautioned against "succumb[ing] to the temptation to use violence in our struggle for freedom" lest our legacy be "a long and desolate night of bitterness" and "a never-ending reign of chaos." Martin Luther King, Jr., *The Words of Martin Luther King, Jr.* 71 (selected by Coretta Scott King, 1996). And, unlike petitioners, he promised to "[r]efrain from violence of fist, tongue, or heart"—and he honored that pledge. *Id.* at 74. Had Dr. King, Ms. Parks and others engaged in the sort of violent conduct engaged in by petitioners here, their actions would quite properly not have received First Amendment protection.

only this violent and, as petitioners admit, "criminal" conduct that is at issue in this case and potentially subject to a well-tailored injunctive remedy. *See supra* p. 6-7, 10-11. Dr. King and Ms. Parks would have nothing to worry about from this case.

Moreover, like Dr. King and his followers, the Consistent Life *Amici* have expressly stated that they are committed to "principles of nonviolent direct action" and do not "encourage or condone the use of violence as a legitimate form of social protest." (CL Br. at 8.) Thus, if they abide by this commitment to nonviolence, the Consistent Life *Amici*, along with any other individuals or groups who voice their views through leafleting, picketing, or other peaceful forms of expression without threatening violence, have nothing at all to fear; they would not be liable under the Hobbs Act and would be fully protected by the First Amendment.[7]

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[7] The contention by the Consistent Life *Amici* that their organizations could still face liability because "sooner or later . . . a member of a loosely defined movement may do things that are not authorized by the leadership" ignores the jury instructions in this case, which made clear that "[l]iability may not be imposed upon any defendant merely because that defendant belonged to a group, some members of which committed acts of violence." (Sch. App. 185a.; *see also id.* at 48a (noting that plaintiffs were required "to show that PLAN itself, and not merely isolated members, intended that the illegal acts occur, that the defendants were aware of PLAN's illegal aims, and that the defendants held a specific intent to further those aims through their association with PLAN").) As the Seventh Circuit made clear, the district court's "exacting test" for organizational liability was fully satisfied by the record in this case. (*Id.*) *See supra* pp. 4-6.

II. INJUNCTIVE RELIEF IS ESSENTIAL IN THIS CASE TO ENSURE THE SAFETY OF MEDICAL PROFESSIONALS

With the creation and implementation of a carefully tailored injunction, the courts below have prevented petitioners from using illegal, forcible, violent, criminal conduct to pursue their cause against reproductive health care providers. Such an injunction remains necessary to ensure the safety of health care providers and those individuals who work for them and for whom they serve, from the violent acts and threats of violence committed by petitioners. Indeed, the violent nature of petitioners' actions, recognized previously by the lower courts, warrants an injunction against the petitioners' continuing attempts at violent and threatening conduct.[8]

A. A Permanent Injunction Is Necessary Given the Nature of the Acts and Threats of Violence Committed by Petitioners

Given the violent nature of petitioners' actions and the refusal of petitioners to cease committing these acts and further threats of violence, the district court's issuance of a permanent injunction that is tailored to the specific violent conduct is essential. As demonstrated above, petitioners did more than just block a few clinic doorways and make a few threats. Their behavior included more than just holding signs or praying in front of clinics. They created and engaged in a pervasive, nationwide course of conduct that was specifically designed to intimidate clinic staff and patients into giving up their

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[8] The Seventh Circuit stated on remand that "it appears that it would be an abuse of discretion for the district court to re-enter any nationwide injunction." (Sch. App. 16a.) For the reasons discussed below, we believe that nationwide injunctive relief is an appropriate (and well-tailored) remedy here. In any event, the precise scope of the injunction is a question properly left for the district court on remand.

constitutionally-protected rights and prevent them from carrying out their business. Moreover, the evidence presented at trial established that petitioners have a history of engaging in such unlawful and criminal conduct. The jury found that over a ten-year period the petitioners "committed . . . acts and threats of violence to persons and property across the United States." (Sch. App. 166a.) The jury also specifically found that petitioners committed "4 acts or threats of physical violence," and this finding undoubtedly led to the design of the district court's injunction against petitioners.[9] In fact, petitioners' counsel readily acknowledged at oral argument in *Scheidler II* "that aspects of his clients' conduct were criminal." 537 U.S. at 404.

The district court further found that despite the passage of the Freedom of Access to Clinic Entrances Act of 1994 ("FACE"), 18 U.S.C. § 248, petitioners' violent conduct against clinics had continued and had thus not eliminated the need for an injunction in this case. Nor have petitioners agreed not to commit unlawful acts in the future, further necessitating an injunction here. At the post-trial hearing, respondents presented evidence of petitioners' illegal activities since the passage of FACE, including:

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[9] "In exercising its equitable jurisdiction, '[a] federal court has broad power to restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed or whose commission in the future unless enjoined, may fairly be anticipated from the defendant's conduct in the past.'" *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U.S. 100, 132 (1969) (quoting *NLRB* v. *Express Publishing Co.*, 312 U.S. 426, 435 (1941)). This Court has thus held that a court's remedy "is not limited to prohibition of the proven means by which the evil was accomplished, but may range broadly through practices connected with acts actually found to be illegal." *United States* v. *U.S. Gypsum Co.*, 340 U.S. 76, 88-89 (1950).

- Placing of butyric acid in a reproductive health clinic in Orlando, Florida in May of 1998, and petitioners' blocking clinic doors and physically accosting individuals as they attempted to enter a clinic in Chicago in August of 1996. (Sch. App. 167a.)

- Witness testimony that "various injunctions under FACE have been sought and implemented in order to address these activities, but the illegal conduct of the [petitioners] continues as [petitioners] cross state lines to avoid the jurisdiction of the various injunctions." (*Id.*)

- Additional testimony that "blitzkrieg tactics were sometimes used to swoop in on a clinic without warning so as to overwhelm available law enforcement personnel." (*Id.*)

The district court assessed this evidence and found that petitioners had continued their illegal and violent behavior throughout and following the passage of FACE, thus warranting entry of an injunction as to petitioners' conduct. Thus, while, as Justice Ginsburg noted in *Scheidler II*, FACE was crafted as "a statutory response that homes in on the problem of criminal activity at health care facilities," 537 U.S. at 411 (Ginsburg, J., concurring), it is evident from the evidence presented to the district court in this case that this statutory response did not specifically curtail the illegal actions of *these* petitioners. Moreover, FACE might be sufficient to remedy harm done for *future* acts of violence that are directed towards reproductive health care facilities, but that would require an entirely new lawsuit based only on those future acts. For respondents here, FACE is no answer to the extraordinary harm already caused by these petitioners over a period of many years prior to the enactment of FACE. In short, these petitioners should not be permitted to get away with their prior admitted *criminal* conduct, and thus a permanent injunction under RICO to protect

respondents from petitioners' violent conduct must be maintained.[10]

B. A Nationwide Injunction Is the Only Sufficient Remedy

The district court's decision to issue an injunction that was national in scope was also necessary to protect against criminal conduct that was committed by petitioners against reproductive health clinics across the nation. The nationwide scope of the injunction remains necessary because it is clear that petitioners' conduct occurred across the nation and that "injunctions that are geographically limited do not prevent [petitioners] from engaging in illegal conduct." (Sch. App. 167a-168a.) Other courts similarly have held that an injunction can and should be national in scope in the abortion protest context. In *United States* v. *Dinwiddie*, 76 F.3d 913, 929 (8th Cir. 1996), for example, the Eighth Circuit upheld a permanent injunction against an anti-abortion protester, finding that not only was there an interest in protecting the specific health clinic staff and patients involved in the case but also in protecting the patients and staff of other reproductive health clinics across the country from the criminal conduct of the defendant. The Eighth Circuit found that the defendant "could easily frustrate the purpose and spirit of the permanent injunction simply by stepping over state lines and engaging in similar activity at another reproductive health facility." *Id.* at 929 (internal

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[10] Moreover, it is clear that a permanent injunction is necessary in this case because monetary damages are insufficient to stop petitioners from committing their criminal actions against health clinics. Money simply is not an adequate remedy for the individuals and organizations physically harmed by the violent acts and threats of petitioners. Indeed, here, where petitioners claim to be judgment-proof, the threat of money damages alone has no deterrent effect. And, in any event, the Seventh Circuit held on remand that monetary damages are no longer available in this case. (Sch. App. 16a.)

quotation marks omitted). Courts also have held that an injunction can and should be nationwide in scope in other contexts as well. *See, e.g.*, *United States* v. *Carson*, 52 F.3d 1173, 1184-85 (2d Cir. 1995) (upholding permanent injunction against union official's future participation in affairs of any labor organization); *Bresgal* v. *Brock*, 843 F.2d 1163, 1171 (9th Cir. 1987) (enforcing nationwide injunctive relief for migrant workers against forestry labor contractors not party to the litigation, including those not based in the Ninth Circuit). The reasoning of the *Dinwiddie* court along with the evidence presented at trial of petitioners' violent conduct—acts and threats of physical violence committed by petitioners throughout the United States—further buttresses the necessity of a nationwide injunction against petitioners' actions in this case. *See, e.g.*, *supra* pp. 2-4 (noting petitioners' violent acts and threats committed in California, Delaware, Wisconsin, and Washington, D.C.).

As petitioners admitted before this Court, their actions are clearly criminal. Their acts and threats of violence are not protected activities. *See supra* pp. 9-14. Thus, under *Madsen* and *Schenck*, an injunction against the violent conduct engaged in by petitioners, such as the one entered by the district court, is clearly proper. *See supra* note 4. Moreover, it is clear that the district court's prior determination that the injunction against petitioners' conduct must be nationwide was proper in light of petitioners' violent conduct—which has reached health clinics, patients, and staff throughout the nation. To ensure the safety of those who continue to seek and provide medical services at these health clinics, a nationwide permanent injunction is appropriate here and burdens no protected rights.

CONCLUSION

For the reasons stated above, and those in respondents' brief, *amici* respectfully request that the Court affirm the Seventh Circuit's decision below.

Dated: New York, New York
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Respectfully submitted,

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APPENDIX
Particular Statements of Interest of *Amici Curiae*

American Association of University Women

For well over a century, the American Association of University Women ("AAUW"), an organization of over 100,000 members, has been a catalyst for the advancement of women and their transformation of American society. In more than 1,300 communities nationwide, AAUW plays a major role in mobilizing advocates on AAUW priority issues that promote equity for women and girls, including: equal opportunity in education; reproductive choice; equal pay; preserving social security; and other civil rights issues. AAUW promotes the social, economic, and physical well-being of all persons, including freedom from violence. AAUW believes that in order for women to advance in the workplace, education, and all aspects of their lives, women must be free to make their own reproductive health choices. Therefore, AAUW supports the right of every woman to safe, accessible, and comprehensive reproductive health care, including safe access to family planning services and abortion clinics nationwide.

Americans for Democratic Action, Inc.

Americans for Democratic Action, Inc. ("ADA") is an independent liberal political organization, founded in 1947 by Eleanor Roosevelt, Joseph Rauh, and others, dedicated to promoting individual liberty and economic justice. ADA publishes a weekly legislative newsletter for liberal activists, a quarterly newsletter, special reports, including an annual voting record report that ranks Members of Congress according to a liberal quotient, based on a full spectrum of domestic and international policy issues. In addition to its legislative advocacy, ADA maintains a political action committee to support liberal candidates for Congress. ADA also engages in independent campaign activity in support of presidential candidates.

Black Women's Health Imperative

The Black Women's Health Imperative, formerly the National Black Women's Health Project, is a national, not-for-profit, 501(c)(3), educational, scientific, advocacy, research and leadership development organization. Established in 1983, the organization has taken the lead to ensure optimum health for Black women, physically, mentally and spiritually. The Imperative began and sustains a nationwide Black women's health movement to move personal health to the top of the life agenda of every Black woman, and the health of Black women as a top priority on the legislative, policy, and research agenda of the nation.

Center for Reproductive Rights

The Center for Reproductive Rights (the "Center") is a national public interest law firm based in New York City dedicated to preserving and expanding reproductive rights in the United States and throughout the world. The Center's domestic and international programs engage in litigation, policy analysis, legal research, and public education seeking to achieve women's equality in society and ensure that all women have access to appropriate and freely chosen reproductive health services, including contraceptives. The Domestic Legal Program of the Center specializes in litigating reproductive rights cases throughout the United States and is currently lead or co-counsel in a majority of the reproductive rights litigation in the nation.

Center for Women Policy Studies

The Center for Women Policy Studies was founded in 1972 with a mission to shape public policy to improve women's lives. A hallmark of our work is the multiethnic feminist lens through which we view all issues affecting women and girls. In all of our work, we look at the combined impact of gender, race, ethnicity, class, age, disability, and sexual orientation. We struggle for women's human rights—justice and equality for women at home and abroad. The Center represents the interests of all women in the United States whose right and ability to

control their reproductive lives—without fear of physical harm or intimidation—would be greatly hindered by the actions of organizations like the Pro-Life Action Network ("PLAN") and the absence of appropriate legal redress.

Hadassah, WZOA, Inc.

Hadassah, the Women's Zionist Organization of America, founded in 1912, is the largest women's and Jewish membership organization in the United States, with over 300,000 members nationwide. In addition to Hadassah's mission of maintaining health care institutions in Israel, Hadassah has a proud history of helping to protect the rights of women and the Jewish community in the United States. Hadassah has a longstanding commitment to supporting a women's right to choose abortion and other reproductive health services. Hadassah views freedom of choice as a matter of privacy of the individual to be determined by each woman in accordance with her religious, moral and ethical values. While Hadassah is committed to upholding First Amendment freedoms including the right of peaceful protest, Hadassah condemns violence at family planning clinics.

Legal Momentum

Legal Momentum (the new name of NOW Legal Defense and Education Fund) advances the rights of women and girls by using the power of the law and creating innovative public policy. A major goal of Legal Momentum's work is to secure reproductive rights for all women. To this end, Legal Momentum has litigated numerous cases involving clinic violence and efforts to protect safe access to reproductive health services, including *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993) and *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997). Legal Momentum has also intervened on behalf of doctors, women and clinics to defend the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248, against constitutional challenges in several cases.

NARAL Pro-Choice America

NARAL Pro-Choice America Foundation/NARAL Pro-Choice America, with 27 state affiliates and hundreds of thousands of members and supporters nationwide, is dedicated to keeping abortion safe, legal, and accessible for all women. NARAL Pro-Choice America's mission is to support and protect, as a fundamental right and value, a woman's freedom to make personal decisions regarding the full range of reproductive choices through education, training, organizing, legal action, and public policy. NARAL Pro-Choice America recognizes that the nationwide campaign of anti-choice violence threatens women's right to choose abortion by exacting a physical and emotional price from patients who seek access to medical services, and by exacerbating the shortage of providers of abortion.

National Asian Pacific American Women's Forum

Founded in 1996, the National Asian Pacific American Women's Forum ("NAPAWF") is dedicated to forging a grassroots progressive movement for social and economic justice and the political empowerment of Asian Pacific American ("APA") women and girls. NAPAWF's vision includes strengthening communities to reflect the social, political, and economic concerns and perspectives of APA women and girls; inspiring leadership and promoting the visibility and participation of APA women and girls in the political process and within the broader national and international women's movement; and creating a vehicle for progressive APA women to connect with others across the country to share strategies and form lasting coalitions around policy initiatives and grassroots organizing campaigns. Reproductive freedom and civil rights are among the central issues that form the basis of NAPAWF's advocacy. NAPAWF believes that all women have the fundamental human right to safely access reproductive health care services, including abortion.

National Center for Lesbian Rights

National Center for Lesbian Rights ("NCLR") is a national legal resource center with a primary commitment to advancing the rights and safety of lesbians and their families through a program of litigation, public policy advocacy, and public education. Since its inception in 1977, NCLR has had a strong commitment to freedom of expression and association as well as to reproductive autonomy for all women.

National Council of Jewish Women, Inc.

The National Council of Jewish Women, Inc. ("NCJW") is a volunteer organization, inspired by Jewish values, that works to improve the quality of life for women, children, and families and strive to ensure individual rights and freedoms for all through its network of 90,000 members, supporters, and volunteers nationwide. As such we endorse and resolve to work for "the protection of every female's right to reproductive choice, including safe and legal abortion, and the elimination of obstacles that limit reproductive freedom." Consistent with our priorities and resolutions, NCJW joins this brief.

National Health Law Program

Founded in 1969, The National Health Law Program ("NHeLP") is a private, non-profit advocacy organization whose mission is to work for increased and improved access to quality health care for low-income individuals and communities. Since its inception, NHeLP's work has included legal and policy analysis, advocacy, information and education on behalf of low-income women to help secure comprehensive health care, including reproductive health services. NHeLP believes that low-income and other underserved communities, including individuals who are uninsured, already have severely limited access to medically necessary services. Violent acts erode the ability of the health care safety net to provide the range of critical health care to low-income communities.

National Latina Institute for Reproductive Health

The mission of the National Latina Institute for Reproductive Health ("NLIRH") is to ensure the fundamental human right to reproductive health care for Latinas, their families and their communities. Through advocacy, community mobilization, and public education, NLIRH is shaping public policy, cultivating new Latina leadership, and broadening the reproductive health and rights movement to reflect the unique needs of Latinas. NLIRH believes that coercive, discriminatory and/or punitive policies and practices are differentially impacting Latinas and other women of color. For example, welfare family caps, prohibitions on publicly funded abortion, court mandated use of Norplant, mandatory HIV testing of pregnant women or newborns, and policies that criminalize pregnant substance users have disparately impacted women of color. While the tactics and subterfuge may vary, these policies all seek to place the locus of control for reproductive health decisions outside of Latinas' hands, thereby violating the fundamental human right to self determination and undermining the health and well-being of Latinas.

National Partnership for Women & Families

The National Partnership for Women & Families is a non-partisan, non-profit advocacy group founded in 1971 that uses public education and advocacy to promote fairness in the workplace, quality health care, and policies that help women and men meet the dual demands of work and family. The National Partnership firmly believes that quality health care must include access to the full range of women's reproductive health services. As a result, the National Partnership has a long history of promoting and defending a woman's right to choose by filing *amicus curiae* briefs in major reproductive rights and health cases.

National Women's Law Center

The National Women's Law Center is a Washington-based legal organization that has been working since 1972 to advance and

protect women's legal rights. The Center's primary goal is to ensure that public and private sector practices and policies better reflect the needs and rights of women. The fundamental right to abortion recognized in *Roe* v. *Wade* is of profound importance to the lives, liberty, health, and safety of women throughout the country. Because of the tremendous significance to women of the freedom to choose whether to bear children, the National Women's Law Center seeks to preserve women's right to abortion, which can only be assured if there is access to health care providers.

Women Employed

Women Employed is a non-profit organization whose mission is to improve the economic status of women and remove barriers to economic equity. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts. Women Employed maintains that it is every individual's fundamental right to obtain health care, and any restriction or impediment to this right should be unlawful. Likewise, employees engaged in the administration of health care should be guaranteed the right to perform their work free from any form of harassment.

Women's Law Project

The Women's Law Project ("Law Project") is a non-profit feminist legal advocacy organization based in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the Law Project is committed to the elimination of sex discrimination and believes that reproductive freedom is an essential component of women's equality. Since our founding, we have frequently represented medical professionals and patients seeking to provide or receive abortion services, often in the face of organized and concerted anti-abortion violence. Our clients have been subjected to arson, death threats, massive and repeated clinic blockades, vandalism of medical equipment and patient records, chemical

attacks, assaults, bomb scares, anthrax hoax letters, and frequent harassment and stalking of doctors, patients, and staff.

Woodhull Freedom Foundation

The Woodhull Freedom Foundation ("WFF") is a non-profit organization that works to affirm sexual freedom as a fundamental human right by protecting and advancing freedom of speech and sexual expression. The Woodhull Freedom Foundation promotes sexuality as a positive personal, social and moral value through research, advocacy, activism, education and outreach.